IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REVISION No.191 of 2004
Vivekanand Singh
Versus
RAJESHWAR SINGH & ORS
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15. 07.07.2008. Heard learned counsel for the petitioner and the State.

Petitioner is the second party in a 145 Cr.P.C. proceeding and he has filed this Cr. Revision application against the order dated 8.1.2004 passed by the Sub-Divisional Magistrate, Khagaria in Case No. 406(M)/76, whereunder learned Magistrate has declared possession of the first party over the subject matter of the proceeding.

It is submitted on behalf of the petitioner with reference to the order dated 13.10.2003 passed by the learned Magistrate that as the proceeding lingered before the learned Magistrate for a long time, the matter was again required to be heard, for which date was fixed as 28.10.2003 but even on that date and thereafter the matter could not be heard as would appear from orders dated 10.11.2003, 18.11.2003, 28.11.2003, 05.12.2003, 12.12.2003, 24.12.2003, 27.12.2003, 3.1.2004, however, under orders dated 3.1.2004 the matter was fixed for final order on 8.1.2004 when final order declaring the possession of the second party was passed against which this Cr. Revision application has been filed asserting that neither the petitioner was heard nor the three documents enumerated in paragraph 16 of this petition, which were on record in the proceeding, were considered.

Inspite of appearance of the opposite party, who was the first party in the court below, no counter affidavit has been filed disputing the aforesaid statements. In the circumstances, the impugned

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order dated 81.2004 passed by the Sub-Divisional Magistrate, Khagaria in case no. 406 (M) of 1976 is set aside with direction to the petitioner and the opposite party to appear before the learned Sub-Divisional Magistrate, Khagaria on 28th July, 2008, whereafter the learned Magistrate should hear the parties on a date fixed by him within one month from the date of their appearance and after considering the documents filed by both the parties including the one mentioned in paragraph 16 of the Cr. Revision application, pass appropriate final orders in accordance with law and with these directions, this Cr. Revision application is disposed of.

(V.N.Sinha,J.)

P.K.P.

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